

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh and Remy
From: Scott Hallabrin, General Counsel
Subject: Adoption of Amendments to Regulations 18361.2 and 18361.4
Date: May 25, 2007

Proposed Commission Action: Adopt amendments to Regulations 18361.2 and 18361.4.

Reason for Proposal: Current Regulation 18361.2 sets forth the procedures by which the Commission determines whether to initiate civil litigation in an enforcement action. Essentially, the regulation requires the Executive Director to provide a memorandum for the Commission to consider in closed session. No members of the Commission staff are permitted to attend the closed session, except for the purpose of answering questions pertinent to the Commission's deliberations. The Commission is required to transcribe all closed session communications between the Commission and these staff members. According to subdivision (d) of the regulation, the reason for this is to minimize the Commissioners' exposure to information that may cause them to prejudge the case if it ultimately comes before them in an administrative action under Section 83116. If the Commission decides to initiate civil action, members of the Commission staff are then permitted to attend the closed session and advise the Commission on the civil action.

Staff believes the due process rights of a person who may become a respondent in an administrative action will be better protected if the General Counsel, or if the General Counsel is unavailable an attorney in the Legal Division, reviews the memorandum on possible civil litigation prior to its submission to the Commission. Also, staff believes the General Counsel's and Commission Assistant's presence during the entire time of the Commission's closed session deliberations will assist the Commission in several ways. The General Counsel, or an attorney in the Legal Division if the General Counsel is unavailable, can advise the Commission on legal and procedural issues that may arise during its deliberations. The Commission Assistant can make and preserve the required record for the closed session. Finally, recording rather than transcribing discussions with members of the Commission staff will save time for the Commission Assistant, maintain an adequate record of these discussions and provide respondents with a more precise record of these discussions.

Current subdivision (b)(3) of Regulation 18361.4 makes reference to the "transcript" that is to be provided to respondents under Regulation 18361.2. Staff proposes amending Regulation 18361.4(b)(3) to change the word "transcript" to "recording" to reflect the change being made to Regulation 18361.2.

Summary of Proposed Amendments: The proposed amendments essentially make four substantive changes to Regulation 18361.2: (1) require the General Counsel, or an attorney from

the Legal Division, to review the Executive Director's memorandum on possible civil litigation before it is submitted to the Commission; (2) require the General Counsel, or an attorney from the Legal Division, to be in attendance during the Commission's closed session deliberations on whether to initiate a civil enforcement action; (3) require the Commission Assistant to be in attendance at the same closed sessions; and (4) require Commission discussions with staff members as described above to be recorded rather than transcribed. The only substantive amendment to Regulation 18361.4 would change the word "transcript" in subdivision (b)(3) to "recording." All other proposed amendments to Regulations 18361.2 and 18361.4 are technical or clarifying.

Recommendation: Adopt the proposed amendments to Regulation 18361.2 and 18361.4.